STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
DISABILITY COMPENSATION DIVISION
830 PUNCHBOWL ST RM 209
HONOLULU HI 96813

Claimant	STANLEY R. TSUJI PO BOX 778 HONOLULU HI 96808	DECISION 93 JUN 18 A 7:52
Employer	STATE OF HAWAII DEPT OF PUBLIC SAFETY	
Insurance Carrier	STATE OF HAWAII DEPT OF PERSONNEL SERVICES WORKERS COMPENSATION DIVISION 345 QUEEN ST 5TH FL HONOLULU HI 96813	

Case No: 19210190
D/A: MAY 25, 1992
SSN: 576-92-0977

Such investigation of the above-entitled matter having been made as the Director deems necessary, the Director makes the following.

FINDING OF FACTS

On May 25, 1992, claimant was in the employ of the above-named employer; on said date, claimant sustained stress injured by accident arising out of and in the course of employment; said injury was not caused by claimant's willful intention to injure oneself or another nor by intoxication. As a result of said injury, claimant was temporarily and totally disabled from work beginning (waiting period: May 25, 1992 through May

27, 1992) May 28, 1992 and continuing until such time as the Director deems such disability has ended. The matters of permanent partial disability and disfigurement, if any, shall be determined at a later date. The average weekly wages of the claimant were $474.69.

A hearing was held to discuss the issues of compensability, temporary total disability, and other related issues.

Claimant contends that the stress and mental anguish he suffers is a result of three years of harassment and threats from being on modified duty in the outdoors because of his work related respiratory ailment. He states that his stress worsened on May 25, 1992 when he was wrongfully ordered by his employer to report to regular duty at the closed air facility which had caused his respiratory ailments. He further contends that employer did not have State of Hawaii, Dept. of Occupational Safety & Health (DOSH) do a follow-up scientific investigation of the closed air facility since it was renovated and the no smoking policy was implemented.

Claimant notes that Edward Lau, M.D.'s certificate of May 26, 1992 advises him to go on leave of absence based on stress if he is returned to work inside the building.

Employer denies liability for this alleged claim because no documented injury or accident occurred which would fall under workers' compensation laws. Employer contends that claimant's argument that his alleged stress is from being returned to the closed air facility is not valid because this facility had recently been renovated and there is now a total smoking ban policy in accordance with Craig Kadooka, M.D's recommendation in his letter June 5, 1989 if claimant was to return to this facility. Further, the June 1, 1989 DOSH report indicated that there was no violations and prior to employer's order to return to the facility, DOSH inspected the facility and indicated that the air appeared to be clean.

Claimant's previous workers' compensation claim of November 13, 1987 was for a respiratory condition. A Physician's report (WC-2) of July 18, 1989 indicated that no further treatment was necessary after June 5, 1989. Subsequently, a March 9, 1990 decision was rendered and stress was not noted in this decision.

Upon review of the entire matter, we find this claim for workers' compensation is compensable. Although claimant apparently felt stress from harassment and threats since he was placed on modified duty on June 5, 1989, it appears that claimant's stress did not manifest until May 25, 1992 when claimant was ordered by employer to return to regular duty at the closed air facility which caused his respiratory ailments. Claimant sought treatment with Dr. Lau on May 26, 1992 and Leigh Sakamaki, M.D., on May 27, 1992. Both doctors opine that claimant should not return to the closed air facility. Dr. Sakamaki opines in her WC-2 of May 27, 1992 that claimant suffers from "acute situational stress to work situation." Dr. Sakamaki also opines that further psychiatric treatment is not necessary if he is not put back into the closed air environment.

Employer states that Dr. Kadooka opined in his WC-2 report of July 18, 1989 that no further treatment was necessary after June 5, 1989. We note that Dr. Kadooka in his letter of June 5, 1989, recommends that claimant's restriction from "working in smoke-laden areas be indefinite until the smoking policy is changed or much-improved air circulation is achieved." Employer assets that these changes have been made since there is currently a smoking ban inside this facility and the air condition system was renovated. We acknowledge that employer has made the recommended changes but question whether a satisfactory follow-up investigation was conducted by DOSH.

A letter dated April 19, 1992 from the employer's administrator to DPS indicates that a DOSH investigator inspected all buildings at HCCC on March 29, 1992 and "verbally indicated the air appeared clean. He indicated that he would follow-up with the ventilation installers regarding scope of work. To this date, the written report has not been received." Based on the above letter, we do not believe that a satisfactory investigation was conducted

whereby employer would be able to order claimant back to the closed air facility.

Further, Dr. Lau's WC-2 report dated August 14, 1992 indicated that when he consulted claimant on July 18, 1992, "patient feels less stress and less breathing problems since leaving site of work." In his subsequent WC-2 dated December 23, 1992, Dr. Lau indicates that when he consulted claimant on December 17, 1992, claimant suffered "no specific problems-stress and anxiety resolving." During these two consultations, Dr. Lau indicates that claimant was not working. Based on this, claimant's problem appears to be resolving when he is away from the closed air facility at work.

Therefore, based on the aforementioned, we find that claimant is entitled to temporary total disability benefits from May 25, 1992. Employer has not provided any medical evidence that the environment which they have ordered claimant to return to is "safe" for him, thereby resolving his situational stress.

Thereupon the Director makes the following

DECISION

1. Pursuant to Sections 386-21 and 386-26, HRS, said employer shall pay for such medical care, services and supplies as the nature of the injury may require.

2. Pursuant to Section 386-31(b), HRS, said employer shall pay to claimant weekly compensation of $316.48 for temporary total disability beginning May 28, 1992 and terminating at such time as is determined by the Director that such disability has ended.

3. The matters of temporary disability, permanent disability and/or disfigurement, if any, shall be determined at a later date.

BY ORDER OF THE DIRECTOR, JUNE 18, 1993.

/s/ Gary Hamada,
Administrator

APPEAL: This decision may be appealed by filing a written notice of appeal with the Director of Labor and Industrial Relations or his county representative within twenty days after a copy of this decision has been sent.